IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

APPEAL NO.770 OF 2004
IN
CHAMBER SUMMONS NO.1528 OF 2004
IN
SUIT NO.3690 OF 1992

Hatane Premises Pvt. Ltd. Appellants

vs.

1. Mascot Developers & ors. Respondents

Dr.Virendra Tulzapurkar, senior counsel and Ms.Alpana Ghone i/b. M/s.Kanga & Co. for the appellants.

Mr.Pradeep Sancheti with Ms.Anita Castelino for the respondents 1 to 3.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ.

DATED : 16th December 2004

P.C.

Heard the learned senior counsel for the appellants and the learned counsel for the respondents 1 to 3.

2. During the course of hearing, the learned counsel for the respondents 1 to 3 (original plaintiffs) indicated that the original plaintiffs are desirous of taking out notice of motion for the restraint order against the defendant no.7 during the pendency of suit. In the chamber summons taken out by the plaintiffs, it was prayed that the defendant no.7 (appellant herein) be ordered and directed to disclose the names of the

Transferees in whose favour third party rights have been created by the defendant no.7 in respect of the subject property together with their addresses and the documents executed between the defendant no.7 and these parties. When the chamber summons came up before the learned Chamber Judge, the counsel for the defendant no.7 made the statement that on or before 9th November 2004 the defendant no.7 would disclose in writing to the plaintiffs advocate the entire particulars of third party rights created by them including the name of the person in whose possession such right is created. The counsel for the defendant no.7 having made that statement and accepted by the learned Chamber Judge, in our considered view, there was no justification in passing the restraint order against the defendant no.7 in the chamber summons. The learned Chamber Judge could have granted liberty to the plaintiffs to take out appropriate notice of motion for interim relief against the defendant no.7.

3. In the circumstances, we dispose of the appeal by the following order:

(i) The direction in the impugned order dated 2nd November 2004 that defendant no.7 is restrained from creating any further right, title and/or interest of any nature whatsoever

in respect of suit property is set aside.

(ii) However, this will not preclude the original plaintiffs to take out notice of motion for interim relief against the defendant no.7 and if such an application is made, after hearing the parties, the learned motion Judge shall pass appropriate order.

(R.M. LODHA,J.)

(J.P. DEVADHAR,J.)